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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action

1. The following is in response to the after final communications received 5/9/2008.
2. Claims 97 and 98 have been added by Applicant. Since these claims are substantially the same as claims 88 and 89, they are rejected for the same reasons set forth with respect to claims 88 and 89.
3. In light of the interview of 03/13/2008, the 35 USC 112, second paragraph, rejection of claim 92 has been withdrawn.
4. Applicant's arguments have been fully considered, but they are not persuasive. In the remarks, Applicant argues that Gisby et al. (U.S. 6,044,146) does not teach or suggest "if the requester is unavailable, then waiting until a time the requester becomes available" in claim 88 and just because there are conditions under which a method step are not performed does not relieve the Examiner of the requirement to show that step is in the prior art.

In response to this argument, Examiner disagrees. Examiner agrees with Applicant that when determining claim scope, each and every limitation must be considered during claim analysis. MPEP 2106(II)C further states that claim analysis is to identify the boundaries of the protection sought by the applicant and to understand how the claims relate to and define what the applicant has indicated is the invention. USPTO personnel must first determine the scope of a claim by thoroughly analyzing the language of the claim before determining if the claim complies with each statutory requirement for patentability. See *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). With respect to process claims, as is the case with claim 88, the claim limitations will define steps or acts to be performed.

The **subject matter** of a properly construed claim is defined by the terms *that limit its scope*. It is **this subject matter that must be examined**. However, claim scope *is not limited by claim language that suggests or makes optional but does not require steps to be performed*, or by claim language that does not limit a claim to a particular structure. Thus, in this case, the if language utilized in the claim suggest but does not require certain steps to be performed when the claim scope is analyzed. Since this is a process claim, there is no structure that makes it necessary for a computer or other entity to be capable of performing such an act. When performing the process, only one of the "if" statements can occur since it is not possible to satisfy that a requestor is both available and unavailable at the same time. Thus, when properly construing the claim scope, only one if statement is included in the subject matter that must be examined.

Any inquiry concerning this communication should be directed to BETH VAN DOREN at telephone number (571)272-6737.

/Beth Van Doren/
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